

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

LARRY R. FORMAN and HILLMAN,)
FORMAN, CHILDERS &)
McCORMACK, a Nebraska Partnership,)

Plaintiff,)

v.)

TWIN CITY FIRE INSURANCE)
COMPANY, a foreign corporation, a/k/a)
THE HARTFORD)

Defendant.)

Case No.: 8:19-cv-129

NOTICE OF REMOVAL

Defendant Twin City Fire Insurance Company (“Twin City”), by its attorney, Nicholas K. Rudman of Baird & Holm, LLP, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and the Local Rules of the United States District Court for the District of Nebraska, notifies this Honorable Court that the above-entitled cause has been removed from the District Court of Douglas County, Nebraska. In support of this Notice of Removal, Twin City states as follows:

BACKGROUND

1. The Complaint in this civil action was filed on or about February 26, 2019, in the District Court of Douglas County, Nebraska captioned *Larry R. Forman and Hillman, Forman, Childers & McCormack, a Nebraska Partnership v. Twin City Fire Insurance Company*, Case No.CII90001569 (the “Complaint”). A true and correct copy of the Summons and Complaint is attached hereto as **Exhibit A**.

2. Twin City's registered agent was served with a copy of the Complaint *via* certified mail dated February 27, 2019. A true and correct copy of the Service of Process Transmittal for Twin City is attached hereto as **Exhibit B**.

3. Plaintiffs Larry R. Forman and Hillman, Forman, Childers & McCormack (collectively “Plaintiffs”) allege claims against Twin City for liability insurance coverage under a Lawyers’ Professional Liability Policy bearing Policy No. LT 1413455-17 (the “Insurance Policy”) issued by Twin City to the Law Offices of Hillman, Forman, Childers & McCormack in effect from February 4, 2018 to February 4, 2019.

4. The Complaint alleges that on August 31, 2018, Plaintiffs gave written notice to Twin City of a lawsuit filed against Plaintiffs stemming from alleged legal malpractice (the “Underlying Lawsuit”). See Ex. A, ¶ 5. Plaintiffs allege Twin City breached the provisions of the Insurance Policy by denying liability coverage for the claims within the Underlying Lawsuit. *Id.* ¶¶ 6-8.

5. Plaintiffs’ Complaint seeks a judgment determining the rights and obligations of the parties under the Insurance Policy, including a finding that Twin City is obligated to defend Plaintiffs against the Underlying Lawsuit and indemnify for damages that may be awarded against Plaintiffs in that Underlying Lawsuit, as well as statutory fees and costs. Twin City denies Plaintiffs are entitled to the relief sought in the Complaint.

BASIS FOR REMOVAL - DIVERSITY JURISDICTION, 28 U.S.C. § 1332

6. This action may be removed to this Court by Twin City pursuant to the provisions of Title 28 of the United States Code, Section 1441(b), in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(a) (1). As set forth more fully below, there is complete diversity among the parties and the amount in controversy meets the standard for removal.

7. ***Diversity of Citizenship.*** There is complete diversity between the parties. At the time of this filing, Plaintiff Hillman, Forman, Childers & McCormack was, and still is, a professional partnership authorized under the laws of Nebraska, with its principal place of

business in the State of Nebraska. Plaintiff Larry R. Forman is a partner of Hillman, Forman, Childers & McCormack and at the time of filing was, and still is, a citizen of the State of Nebraska. At the time of filing, each of the remaining partners of Hillman, Forman, Childers & McCormack were, and still are, citizens of the State of Nebraska.

8. At the time of filing, Defendant Twin City was, and still is, incorporated in the State of Indiana. Additionally, its principal place of business is located in the State of Connecticut. At no time relevant to Plaintiffs' Complaint has Twin City had a principal place of business in Nebraska, nor was it incorporated in Nebraska. Neither Defendant Twin City nor Plaintiffs are citizens of the same state. Accordingly, complete diversity of citizenship exists for the purposes of 28 U.S.C. §§ 1332 and the removal of this action to this Court is proper under § 1441(b).

9. *Amount in Controversy.* The amount in controversy meets the standard for removal. Specifically, Plaintiffs' Complaint seeks, *inter alia*, a declaration that Twin City is obligated to indemnify Plaintiffs for damages that may be awarded against Plaintiffs in the Underlying Lawsuit. The Underlying Lawsuit involved allegations of negligence stemming from Plaintiffs' attempts to collect on a promissory note on behalf of one of Plaintiffs' clients. *See* Correspondence attached as Exhibits 2 and 3 to Plaintiffs' Complaint. Additionally, a true and correct copy of the complaint in the Underlying Lawsuit is attached hereto as **Exhibit C**. Plaintiffs' client had obtained a judgment on the promissory note against two co-obligors, jointly and severally, for \$387,443.20. *See* Ex. C, ¶ 7. According to the Underlying Lawsuit, Plaintiffs stipulated to release one of the obligors from the debt for payments totaling \$177,000. *Id.*, ¶¶ 6-7. Plaintiffs filed a Satisfaction with the court, releasing that obligor from the debt. *Id.* ¶ 8. However, in doing so, the Underlying Lawsuit alleges Plaintiffs inadvertently released the other debtor as well, leaving over \$200,000 from the judgment uncollectible. *Id.* ¶¶ 10-13. The

Underlying Lawsuit seeks to recover these damages from Plaintiffs herein. Since Plaintiffs seek a declaration that Twin City is obligated to indemnify Plaintiffs for those damages, the amount in controversy exceeds the jurisdictional minimum of \$75,000.

10. Because the jurisdictional minimum is satisfied and the parties are of diverse citizenship, the Court has jurisdiction of this action under 28 U.S.C. §1332. Twin City is, therefore, entitled to remove this action to this Court pursuant to 28 U.S.C. §§1332 and 1441.

PROCEDURAL MATTERS

11. ***Removal is Timely.*** This Notice of Removal is timely under Section 1446(b) because Twin City was served with the complaint in the State Court Action via certified mail dated February 27, 2019. This Notice of Removal is filed within thirty (30) days of the date of mailing of the Complaint setting forth the claim for relief upon which this action or proceeding is based. Therefore, the Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

12. ***Consent.*** Twin City is the only defendant in this matter and no consent to removal is required.

13. ***Pleadings.*** To date, the Complaint is the only pleading received by Twin City in this matter. No pleadings, process or orders other than the Complaint have been served on Defendant and therefore no other pleadings, process or orders are attached to this Notice as required by 28 U.S.C. § 1446(c).

14. ***Removal to Proper Court.*** The United States District Court for the District of Nebraska is the federal judicial district embracing the District Court of Douglas County, Nebraska, where the State Court Action was filed. 28 U.S.C. § 93(a)(1).

15. ***Notice of Removal.*** Notice of filing of removal will be promptly given to Plaintiff and the District Court of Douglas County, Nebraska, as required by 28 U.S.C. § 1446(d). Attached as **Exhibit D** is a true and correct copy of the Notice of Filing of Notice of Removal

which has been served with this document on all parties and will be filed with the District Court of Douglas County, Nebraska.

16. ***Responsive Pleading.*** Additionally, Twin City will serve its responsive pleading to the Complaint pursuant to Fed. R. Civ. P. 81(c) and 6(a), or such subsequent time as set by stipulation of the parties or order of the Court. Twin City expressly reserves any and all rights, objections or defenses that it may assert in response to the Complaint.

17. ***Request for Place of Trial.*** Twin City requests that if trial in this matter is to be held in this District, that it be held in Omaha, Nebraska.

18. Twin City has complied with the procedural requirements of 28 U.S.C. §1446 and the Federal Rules of Civil Procedure governing removal from state court. This Court has original jurisdiction over this matter because there is complete diversity between the parties to this lawsuit and the amount in controversy exceeds \$75,000.00.

WHEREFORE, Defendant, Twin City Fire Insurance Company, respectfully provides notice that this Action has been removed from the District Court of Douglas County, Nebraska, to the United States District Court for the District of Nebraska, pursuant to the provisions of 28 U.S.C. §§ 1332, 1441, and 1446 and the Local Rules of the United States District Court for the District of Nebraska.

Respectfully submitted,

TWIN CITY FIRE INSURANCE COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2019, I electronically filed the aforesaid document(s) with the Clerk of the Court using the ECF system which provided notification of such filing to the following:

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/s/ Nicholas R. Rudman

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